

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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*In the Matter of:*

Alplaus CPO  
Contract No. 089480-02-Z-0155  
Alplaus, New York 12008-0087  
(Alplaus Residents' Association,  
Petitioner)

Docket No. A2012-88

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**UNITED STATES POSTAL SERVICE MOTION TO DISMISS PROCEEDINGS**  
(December 14, 2011)

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of a Postal Service decision to terminate contract number 089480-02-Z-0155, which governs operation of the Alplaus Community Post Office (CPO).<sup>1</sup> As the Postal Service has consistently maintained in this and other dockets, the scope of Section 404(d)(5) is limited to discontinuance of Postal Service operated "Post Offices" and does not apply to operations related to contractor-operated units, which are not owned or operated by the Postal Service. Because Petitioner's appeal concerns the termination of a contract governing the operation of a CPO, an event that falls outside the scope of 39 U.S.C. § 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal.

**FACTUAL BACKGROUND**

Alplaus is an unincorporated hamlet located in Schenectady County in the state of New York. The Alplaus CPO is operated in accordance with contract

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<sup>1</sup> Petition for Review Received from Andy Gilpin, President, Alplaus Residents' Association Regarding the Alplaus, NY Post Office 12008, PRC Docket No. A2012-88 (November 29, 2011).

number 089480-02-Z-0155, entered into by the Postal Service and contractor Ms. Kathleen Boyle. On October 28, 2011, Postal Service officials notified the contractor, Ms. Boyle, of their decision to exercise their right to terminate the contract governing operation of the Alplaus CPO. Former customers of the Alplaus CPO may obtain postal services at the Rexford Post Office, located approximately a mile from the Alplaus CPO, and through [usps.com](http://usps.com) and over 20 other alternate access options located within 5 miles of the Alplaus CPO. See Exhibit 1 (listing from [usps.com](http://usps.com)).

## ARGUMENT

This matter raises the question of whether 39 U.S.C. § 404(d) grants the Commission jurisdiction to consider an appeal of the Postal Service's decision to terminate a contract governing the operation of a non-Postal Service operated retail facility. Petitioner's appeal is not within the scope of the Commission's jurisdiction under 39 USC § 404(d). Section 404(d) does not apply to the Postal Service's management of its contracts, or to the operation of a retail facility whose existence derives solely from the terms and conditions of a voluntary contract. See 39 U.S.C. § 404(d).

Section 404(d) provides that an appeal under that section must concern a "closing" of a "post office." See 39 U.S.C. § 404(d). Consistent with United States Postal Service Handbook PO-101, a discontinuance occurs only from action directed toward a "Postal Service-operated retail facility." Handbook PO-101 (December 1, 2011) at Appendix A. The definition of "Postal Service-operated retail facility" specifically excludes a CPO. 39 C.F.R. § 241.3(a)(2)(i)

(“USPS-operated retail facility’ ... does not include any station, branch, community post office, or other retail facility operated by a contractor”).

Comparatively, the definition of “contractor-operated retail facility” specifically excludes any retail facility operated by a Postal Service employee. 39 C.F.R. § 241.3(a)(2)(ii) (“‘Contractor-operated retail facility’ includes any ... community post office [] or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility”). Thus, the regulations are explicit in distinguishing between Postal Service-operated retail facilities and CPOs, and they eliminate any confusion regarding whether a contractor-operated retail facility is subject to Section 404(d).

In addition, the second element of Section 404(d) jurisdiction – the Post Office requirement – is not met in this appeal. A Post Office is “operated or staffed by a postmaster or by another type of postal employee.” 39 C.F.R. § 241.3(a). Unlike a Post Office, a CPO is operated by a third-party contractor, which is neither a postmaster nor a postal employee. Accordingly, as a matter of law, the relief requested by the Petitioner is not available to Petitioner and should be denied.

The Alplaus CPO is not a Post Office, or even a Postal Service-operated retail facility, so Commission jurisdiction under 39 U.S.C. § 404(d) does not attach. As the Commission is well aware, the Postal Service understands that the Commission lacks subject matter jurisdiction under 39 U.S.C. § 404(d) to review Postal Service decisions regarding the operation of a retail facility that is

not a Post Office. See *generally* Initial Comments of the United States Postal Service, Section 1 (pp. 2-7), PRC Docket No. RM2011-13 (October 3, 2011). This position has even stronger support in the context of CPO units, which are operated by non-Postal Service employees, are often located in other businesses, and generally have fewer similarities to Post Offices. In the Postal Service's view, the Post Office discontinuance regulations in 39 C.F.R. Part 241.3 and Handbook PO-101 do not apply to the Alplaus CPO because the Alplaus CPO is not a Post Office, and it operates solely under the discretionary contractual relationship formed by the Postal Service and a third-party contractor. Similarly, the Commission's Rules of Practice for Post Office closings found in Section 3001.110 et seq. do not apply to a retail facility that is not a Post Office, or to a retail facility whose operations derive solely from a contractual agreement. Petitioner fails to allege facts that constitute a condition precedent to any jurisdiction of the Commission under Section 404. 39 U.S.C. § 404(d)(5).

Petitioner argues that the Postal Service should have followed the procedural requirements of 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 as part of its decision to terminate the contract governing the operation of the Alplaus CPO. Petition for Review Received from Andy Gilpin, President, Alplaus Residents' Association Regarding the Alplaus, NY Post Office 12008, PRC Docket No. A2012-88 (November 29, 2011). But as described above, the Postal Service had no obligation to follow these procedures because its decision concerned a contract by which a third-party contractor offered retail services. For purposes of 39 U.S.C. § 404(d), a discontinuance is limited to "ending operations at a Post

Office, classified station, or classified branch.” United States Postal Service Handbook PO-101 § 233.1 (December 1, 2011). The term “discontinuance” does not extend to operations at a CPO. *Id.* Thus, this appeal does not concern the discontinuance of a Post Office subject to Title 39.

Strong policy reasons support the Postal Service’s position that the Commission lacks jurisdiction to consider the appeal of a Postal Service decision to terminate its contract with a third-party CPO operator. See 76 Fed. Reg. 41416-41417, Section I (July 14, 2011). The procedures imposed by 39 U.S.C. § 404(d) are not compatible with the requirements of contract management, negotiation, and implementation. The Postal Service’s ability to negotiate reasonable contractual terms for the operation of a contract unit, or to require satisfactory contract performance, would be harmed if parties had the option of appealing contractual decisions. A third party, the Commission, would essentially become a party to contract negotiations, injecting more complexity into the contract negotiation process. In many situations, applying the section 404(d) procedures to CPO contract decisions would provide contractors with a bargaining advantage over the Post Office, and force the Postal Service to continue operating a contract even where sound business judgment supports termination. This imbalance in bargaining power would arise most acutely where a CPO operator is the only person in the community capable of operating the CPO. Because the participation of the CPO operator would be necessary to perform the analysis required by section 404, a CPO operator could prevent the

Postal Service from satisfying section 404 by refusing to cooperate, or it could extort money from the Postal Service in exchange for cooperation.

This appeal concerns a purely contractual decision. Thus, 39 U.S.C. § 404(d) and 39 C.F.R. § 241.3 do not apply. Accordingly, the Commission should dismiss the appeal.

#### CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
By its attorneys:






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December 14, 2011

# **EXHIBIT 1**







**EXHIBIT 1**

DISTANCE FROM ALPLAUS, NY 12008	LOCATION	HOURS
Post Office  0.8 mi	REXFORD › 1590 ROUTE 146 REXFORD, NY 12148-9998 12148 9998 1379145 800-ASK-USPS® (800-275-8777)	Mon-Fri 9:00am - 1:00pm 2:00pm - 4:30pm Sat 8:00am - 12:00pm Sun Closed
Post Office  1.7 mi	GLENVILLE › 6 GLENRIDGE RD SCHENECTADY, NY 12302-9997 12302 9997 1433764 800-ASK-USPS® (800-275-8777)	Mon-Fri 8:30am - 5:00pm Sat 9:00am - 1:00pm Sun Closed
Stamp Consignment  1.8 mi	KEYBANK › 241 SARATOGA RD GLENVILLE, NY 12302-4508 12302 4508 ABN1559G1905 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  1.8 mi	CVS › 259 SARATOGA RD SCHENECTADY, NY 12302-4503 12302 4503 ABNCD6611GCNTRL441 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  1.8 mi	PRICE CHOPPER › 290 SARATOGA RD SCOTIA, NY 12302-5019 12302 5019 ABN38G38 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  2.5 mi	CVS › 1330 GERLING ST SCHENECTADY, NY 12308-1702 12308 1702 ABNCD6611GCNTRL5028 800-ASK-USPS® (800-275-8777)	
Stamp Consignment	WAL-MART SUPERCENTER › 200 DUTCH MEADOWS LN	

Source: [usps.com](https://usps.com)



**EXHIBIT 1**

DISTANCE FROM ALPLAUS, NY 12008	LOCATION	HOURS
 2.5 mi	GLENVILLE, NY 12302-3519 12302 3519 ABNWM1000G02874 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  2.5 mi	FIRST NATL BANK OF SCOTIA › 1 RESEARCH CIR SCHENECTADY, NY 12309-1027 12309 1027 ABNCD1008GCNTRL2 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  3.0 mi	SHOPRITE › 2333 NOTT ST E SCHENECTADY, NY 12309-4302 12309 4302 ABN193G229 800-ASK-USPS® (800-275-8777)	
Post Office  3.1 mi	NISKAYUNA › 2320 NOTT ST E SCHENECTADY, NY 12309-9211 12309 9211 1433821 800-ASK-USPS® (800-275-8777)	Mon-Fri 8:00am - 6:00pm Sat 9:00am - 1:00pm Sun Closed
Stamp Consignment  3.3 mi	CVS › 1334 BALLTOWN RD NISKAYUNA, NY 12309-5352 12309 5352 ABNCD6611GCNTRL1292 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  3.4 mi	KEYBANK › 807 UNION ST SCHENECTADY, NY 12308-3103 12308 3103 ABNCD1952GCNTRL20 800-ASK-USPS® (800-275-8777)	
Post Office	SCHENECTADY › 29 JAY ST	Mon-Fri 8:30am - 5:00pm







Source: [usps.com](https://usps.com)

## EXHIBIT 1

DISTANCE FROM ALPLAUS, NY 12008	LOCATION	HOURS
 3.5 mi	SCHENECTADY, NY 12305-9998 12305 9998 1380936 800-ASK-USPS® (800-275-8777)	Sat 9:00am - 12:00pm Sun Closed
Stamp Consignment  3.5 mi	CVS › 806 STATE ROUTE 50 BURNT HILLS, NY 12027-9584 12027 9584 ABNCD6611GCNTRL2072 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  3.6 mi	CVS › 1204 EASTERN AVE SCHENECTADY, NY 12308-3502 12308 3502 ABNCD6611GCNTRL5035 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  3.6 mi	KEYBANK › 1610 EASTERN PKWY SCHENECTADY, NY 12309-6012 12309 6012 ABN1559G1759 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  3.6 mi	PRICE CHOPPER › 1640 EASTERN PKWY SCHENECTADY, NY 12309-6012 12309 6012 ABN38G1 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  3.8 mi	CVS › 415 STATE ST SCHENECTADY, NY 12305-2303 12305 2303 ABNCD6611GCNTRL451 800-ASK-USPS® (800-275-8777)	
Post Office	SCOTIA ›	Mon-Fri 8:45am -

Source: [usps.com](https://usps.com)

**EXHIBIT 1**

DISTANCE FROM ALPLAUS, NY 12008	LOCATION	HOURS
 4.1 mi	224 MOHAWK AVE SCHENECTADY, NY 12302-9918 12302 9918 1433862 800-ASK-USPS® (800-275-8777)	1:00pm 2:15pm - 5:00pm Sat 9:00am - 12:30pm Sun Closed
Stamp Consignment  4.1 mi	CVS › 241 MOHAWK AVE SCOTIA, NY 12302-2128 12302 2128 ABNCD6611GCNTRL5385 800-ASK-USPS® (800-275-8777)	
Post Office  4.1 mi	BURNT HILLS › 845 STATE ROUTE 50 BURNT HILLS, NY 12027-9998 12027 9998 1356432 800-ASK-USPS® (800-275-8777)	Mon-Fri 8:30am - 5:00pm Sat 8:30am - 2:00pm Sun Closed
Stamp Consignment  4.2 mi	WALGREENS › 1044 STATE ST SCHENECTADY, NY 12307-1508 12307 1508 ABNWG1000G13978 800-ASK-USPS® (800-275-8777)	
Stamp Consignment  4.4 mi	PRICE CHOPPER › 1028 ROUTE 146 STE 8 CLIFTON PARK, NY 12065-3679 12065 3679 ABN38G20 800-ASK-USPS® (800-275-8777)	
Post Office  4.8 mi	HERITAGE › 1976 SCHUYLER ST SCHENECTADY, NY 12303-9998 12303 9998 1366782 800-ASK-USPS® (800-275-8777)	Mon-Fri 8:00am - 6:00pm Sat 9:00am - 1:00pm Sun Closed

Source: [usps.com](https://usps.com)